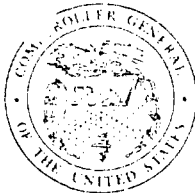


DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-183288

DATE: October 14, 1975

60050

97826

MATTER OF: Julie Research Laboratories, Inc.

DIGEST:

1. Claims that alternative system can meet all present and future Army calibration needs at lower cost do not clearly show that RFP requirement for expandable read/write computer memory is without any reasonable basis, since Army, which must make determination of minimum needs and bear risk of inadequate performance resulting from improper determination, believes greater memory capacity will be needed in future to calibrate more complex equipment, that operator-configurable software will provide desirable flexibility and long-term cost savings, and that despite protester's performance claims, its approach may involve unacceptable technical and cost risks.
2. In any negotiated procurement, burden is on offerors to affirmatively demonstrate merits of their proposals. Where RFP contemplated fixed-price contract for supply of calibration system, not developmental effort, and instructed offerors to make such demonstration on paragraph-by-paragraph basis, offeror which proposed alternative approach to meeting requirements arguably bore even heavier burden of showing how its system would satisfy Army's needs.
3. Where offeror proposing alternative approach to meeting RFP requirements submitted voluminous technical literature, documents, manuals and articles but was proceeding on misconception that Army bore burden of demonstrating how its approach was not feasible, GAO cannot conclude that Army's rejection of basic and alternate proposals as technically unacceptable is shown to be without any reasonable basis. Basic proposal's failure to meet expandable memory requirement and alternate proposal's lack of information on software interface indicate reasonable basis for rejection, notwithstanding protester's allegations of numerous technical errors by Army in failing to understand approach proposed.

4. Allegations of Army officials' persistent unfairness towards protester from time of initial proposal submission through conduct of negotiations, ultimate rejection of basic and alternate proposals, and participation in protest proceedings before GAO cannot be substantiated, since written record fails to demonstrate alleged unfairness, and in fact suggests reasonable explanations for Army's actions. Also, fact that agency officials declined for most part to join in oral discussion of issues at GAO bid protest conference is not objectionable, since agency responded to protester's allegations in several written reports, and conference is not intended to be formal hearing.

The protest of Julie Research Laboratories, Inc. (JRL), involves a procurement by the United States Army Missile Command, Redstone Arsenal, Alabama, of "Laboratory Automated Calibration Systems" (LACS). JRL contests the Army's rejection of its proposals as technically unacceptable. Our conclusion is that JRL's protest must be denied.

Background

Request for proposals (RFP) No. DAAH01-74-R-0877 was issued October 18, 1974, and sought offers for the LACS--a computer-controlled system to calibrate equipment such as meters, signal generators, oscillators, oscilloscopes and oscilloscope plug-ins. Among other requirements, section 3.2 of the Scope of Work provided in pertinent part:

"3.2 LACS Processor

"3.2.1 Scope

"This specification describes the computer, peripherals, and all software other than the calibration programs.

"3.2.2 Memory

"If the proposed system requires a shared central processor, the system computer shall have a minimum 32K (16 bit words) or equivalent expandable in the field to 64K words. If the proposed system requires a dedicated

processor, the computer in each station shall have a minimum of 16K (16 bit words) or equivalent expandable in the field to 32K words."

JRL and several other concerns submitted offers. After a technical evaluation, written questions were posed to the offerors and written answers were received during January 1975. Oral discussions were then held and offerors were requested to submit written memoranda covering the points which had been discussed. The oral discussions with JRL were held on January 30, 1975, and JRL submitted its memorandum on February 6, 1975. Also, on February 6, 1975, and on subsequent occasions, there were further discussions over the telephone between JRL representatives and Redstone Arsenal personnel concerning, inter alia, the LACS memory requirements.

On February 14, 1975, the Army issued amendment 0002 to the RFP, which stated in part:

"(c) For clarification purposes, the expandable memory (required by para 3.2.2 of the Scope of Work) shall be general purpose software usable memory."

On February 28, 1975, JRL and Army representatives discussed amendment 0002 over the telephone. On the same day, the Army issued amendment 0003 to the RFP, which stated:

"Reference paragraph 3.2.2 of the Scope of Work as clarified by Amendment #0002 to the solicitation. General purpose software usable memory means that the programmer can reconfigure the software used in the memory for the required task through software means or techniques. NOTE: Only the expandable portion of the memory need be completely reconfigurable."

JRL's protest was filed on February 25, 1975, immediately after the protester received amendment 0002. In its initial protest letters, JRL contended that the Army by amendments 0002 and 0003 had changed section 3.2.2, supra, of the RFP to mean something different from what it originally said. JRL stated its belief that section 3.2.2 as originally written allowed the "expandable" portion of the memory to be "equivalent" to general purpose "read/write" memory; that JRL had proposed a suitable equivalent in the form of a calculator with expandable "read only memory"; and that by changing its requirements in amendments 0002 and 0003, the Army was arbitrarily goldplating its

minimum needs by requiring "general purpose computers with large, general purpose, completely redundant internal memories." JRL contended that this change was without any reasonable basis because it would substantially increase the Government's costs to obtain unnecessary capabilities. In short, it was JRL's initial position that the original RFP had adequately stated certain performance criteria, but that the effect of the amendments was to improperly introduce extraneous design criteria related to the memory requirement.

Notwithstanding its contention that the changed memory requirement was improper, in response to the amendments JRL offered its "Option 3" proposal on February 28, 1975, which substituted a minicomputer for the calculator, apparently in order to meet the Army's stated interpretation of the memory requirements.

The Army evaluated the JRL option 3 proposal, found it to be informationally deficient, and advised JRL of this by letter dated March 18, 1975. JRL responded by letter dated March 22, 1975, giving further information concerning its option 3 proposal. The closing date for best and final offers was March 28, 1975. JRL timely submitted a message extending its offer.

By letter dated April 21, 1975, JRL was advised that all of its proposals had been determined to be technically unacceptable by the Army. After the rejection of all of its proposals, JRL amplified its protest by broadly challenging the efficacy and fairness of the evaluation process as a whole.

In this regard, JRL contends that it proposed to furnish a customized version of its commercially available, off-the-shelf system, which meets or exceeds all the Army's needs. JRL states that its proposals were prepared by its technical experts, who are nationally and internationally recognized for inventing, designing, building and teaching in the field of calibration, test equipment, automated testing, systems, computers, and high level programming. JRL contends that its proposals--consisting altogether of almost 500 pages of material--provided sufficient detail to be technically clear, complete and acceptable to anyone sufficiently skilled in the widely diverse fields of electronic computer test equipment, electronic computers, electronic interface equipment, electronic automated calibration systems, and electronic computer programming and software.

JRL contends that, in view of these considerations, the Army's rejection of its proposals as technically unacceptable was incorrect. JRL questions the competence of the agency's technical

evaluation team, alleging that no member could be regarded by any reasonable standard as an acknowledged technical expert in the wide ranging technology which is involved in this procurement. The protester characterizes the Army's technical evaluation report as containing totally contradictory, misleading, deceptive, illogical, incorrect, false and technically inexpert information. JRL contends, specifically, that 38 of the 41 items cited in the Army's technical evaluation report are false.

As discussed infra, JRL also has made a number of allegations that the Army's treatment of its proposals throughout the procurement process was unfair.

Based on these points, JRL contends that our Office should uphold its protest and that it should receive the award, if low in price.

The Army's responses to these arguments, discussed in greater detail infra, are that amendments 0002 and 0003 did not change section 3.2.2 of the RFP, but rather were issued to clarify for JRL's benefit the requirement that the expandable portion of the computer memory be read/write memory; that this and other requirements are valid minimum needs of the Army; that the calculator offered in JRL's initial proposal cannot meet the read/write memory requirement because it offers read only memory; that the JRL alternate "Option 3" proposal--offering a minicomputer in lieu of the calculator--was unacceptable due to substantial informational deficiencies; and that the JRL proposals were properly rejected as technically unacceptable based upon an adequate and fair technical evaluation.

Minimum Needs of the Army

The initial question which must be addressed is the reasonableness of the Army's determination, reflected in RFP section 3.2.2 as amended, that as a minimum requirement the expandable portion of the processor memory must be read/write memory. The Army's justification for this requirement has been summarized by the contracting officer as follows:

"(d) Volume of Processor Memory Required

"Experiments with prototype automatic calibration systems (HP 9213A, HP 9213C, HP 9500-161) have convinced AMCC engineers that 16 K (16-bit words) is the absolute

minimum now needed to perform existing tasks in the field. This same experience has demonstrated that situations will arise in the future when still greater memory capacity will be necessary; there will be software programs with longer segments than can be accepted by the present capacity. These longer, more complicated programs will result from the addition of new calibration test equipment * * *. It is a generally accepted fact in the industry that an operator can save considerable programming effort through the use of larger memory. Therefore the eventual expansion of memory to 32 K (16-bit words) will show cost savings through faster programming and calibration times enabling AMCC to reduce its support to the field.

"(e) Type of Processor Memory Required

"The specification calls out a minimum of 16 K (16-bit words), which may be a mix of read only and read/write, plus expandability to an additional 16 K (16-bit words) of general purpose read/write memory--that is, memory which can be reconfigured by the operator by software means. This flexibility allows the operator to program the LACS system to calibrate any and all instruments by merely reconfiguring the software. The alternative as suggested by JRL is the use of Read Only Memory (ROM) for the expanded capability. ROMs are hard wired computer programs which are in a practical sense non-reconfigurable. Each program task requiring a ROM requires a different ROM for each task, and each time that task is changed the ROM would have to be sent back to the manufacturer for reconfiguration. Not only are ROMs proprietary to the manufacturer, but only ROMs from the manufacturer of the equipment will work in that equipment. This would force the Government into a sole source procurement for ROMs throughout the life cycle of the system. In addition, AMCC is not convinced, nor has JRL been able to show that ROMs can in fact be designed that will do all of the required tasks. At a minimum, the calibration ROMs would require extensive development and therefore be costly."

JRL contends that it is patently false that an additional 16K of read/write memory will have to be added to LACS in the future either to calibrate additional equipment or to reduce calibration costs and/or time and alleges that its commercially

available system now in use calibrates equipment that is 2 to 5 times more complicated than the Army's without using the amount of read/write memory claimed to be needed by the Army. JRL contends that only three "standard" ROM's are needed by its system to handle any equipment now being tested, or which may be tested by LACS in the future.

Both JRL and the Army have cited several decisions of our Office dealing with the scope of review of an agency's determination of its minimum needs. In one of these decisions, Manufacturing Data Systems Incorporated, B-180608, June 28, 1974, 74-1 CPD 348, the general rule was stated as follows:

"It consistently has been held by our Office that the drafting of specifications to meet the Government's minimum needs is properly the function of the procuring agency. * * * We will not question the agency's determinations in this regard unless there is a showing that the determinations have no reasonable basis. * * *" (citing decisions)

The Army has cited this decision and Digital Equipment Corporation, B-181336, September 13, 1974, 74-2 CPD 167, as being particularly pertinent to the present case because they involved somewhat similar factual situations and because our Office did not find that the determinations of minimum needs were shown to be without any reasonable basis.

We believe that these decisions do have pertinence to the present case. In Manufacturing Data Systems, for example, the protester objected, inter alia, to the required size of the core memory of a minicomputer, alleging that this would increase the system's cost by more than \$20,000 to obtain only a savings of 5 to 10 seconds in processing time. The Army disputed this claim and stated that in view of the planned future expansion of the system, the required capabilities would result in a considerable future cost savings. Our Office was unable to conclude that no reasonable basis existed for the requirement.

Similarly, in Digital Equipment Corporation, we took note of the agency's belief that incorporating a visual display system into

a flight simulator was expected to impose greater real-time processing demands, thus justifying the 24-bit minimum memory length to which the protester objected.

These and other decisions make it clear that responsible agency officials are accorded a broad range of judgment and discretion in making determinations of minimum needs. Nevertheless, such determinations must be the product of informed and critical judgments. Winslow Associates, 53 Comp. Gen. 478 (1974), 74-1 CPD 14, involved a situation where for several reasons the contracting agency desired to purchase general purpose programmable simulators, but the protester contended that less costly, "hard wired," nonprogrammable simulators would better serve the agency's actual needs. The agency indicated that its approach offered superior long-term cost benefits because updating of the simulators could be accomplished by software changes as opposed to rewiring.

We held that while the protester had not clearly and convincingly shown that the agency's determination was in error, it had succeeded in casting doubt on several of the main points relied on by the agency in justifying the requirement for multipurpose simulators. Our decision recommended that the agency restudy its needs to determine whether multipurpose equipment was the only type that would satisfy its needs. After restudying its needs, the agency adhered to its prior determination to procure multipurpose simulators, and our Office found that there existed a rational basis for this determination. Winslow Associates, B-178740, May 8, 1975, 75-1 CPD 283.

In the present case, it is our impression that JRL's objections to the Army's position are premised upon the idea that its system offers a creative, innovative approach to meeting the Army's actual calibration needs, and that the Army's views are based on traditional, largely unexamined technical assumptions relating to the processor memory requirement. In this regard, it may be that JRL's existing systems are capable of performing calibration tasks of similar or greater complexity than the Army's present needs. However, we do not conclude that this is the case, since the only basis on the record for so doing is JRL's claims of its equipment's capabilities. Moreover, we have difficulty in seeing how the protester would be in a better position than the Army to anticipate what performance may be required over the life of LACS. It is the responsible Army personnel who must weigh these concerns, who must make a determination which will result in the procurement of equipment which will be sufficient to meet actual needs, and who must

bear the risk that insufficient equipment may be procured if a proper determination is not made.

In any event, we believe that the major difficulty with JRL's overall position is that, even if its contentions are assumed to have some substantial merit, they do not prove enough. That is, they do not in our view clearly demonstrate that the Army's determination is unsupported by any reasonable basis. The Army's view regarding greater memory capacity to meet future calibration needs, the flexibility to be obtained through operator-reconfigurable software, and the concern over availability and cost of ROM's do not on their face appear to be unreasonable. Similar agency concerns withstood objections to minimum needs determinations in Manufacturing Data Systems and Digital Equipment Corporation, supra. Also, we think it pertinent to note that the close scrutiny of the minimum needs determinations in those cases--as well as the doubts raised concerning the agency's position in Winslow Associates--all involved situations where it was alleged that the agency's determination directly or indirectly created a sole-source situation. This is not the case here. Rather, the risk, in the Army's view, is that acceptance of the JRL approach could create a sole-source situation. Further, the technical risks generally involved in adopting what amounts to an alternative approach would appear to be a valid concern of the contracting agency, where, as here, the contract contemplates the production of supplies, not a developmental effort. See, in this regard, Digital Equipment Corporation, supra, and the discussion of this point infra.

Also, we do not believe that the decisions of our Office cited by JRL are persuasive on the issues involved. GAF Corporation, 53 Comp. Gen. 586 (1974), 74-1 CPD 68, and B-157857, January 26, 1966, involved invitations for bids containing "brand name or equal" provisions and dealt with issues of whether the solicitations should be canceled. 49 Comp. Gen. 727 (1970) is cited by JRL for the valid principle that appropriated funds are available only to purchase articles which meet actual minimum needs, but this decision has no similarity on its facts with the present case. Manufacturing Data Systems Incorporated, B-180586, July 9, 1974, 74-2 CPD 13, involved a situation where our Office denied a protest against allegedly restrictive specifications in an Army RFP for commercial computer processing service because we could not conclude that there was no reasonable basis for the RFP's requirements.

One final point concerns JRL's allegations that the Army by means of amendments 0002 and 0003 was arbitrarily attempting to change its minimum needs midway through the procurement. We note that, in the January 30, 1975, oral discussions with JRL, the Army raised a question as to how the JRL proposal would meet the memory requirements. JRL's written responses submitted to the Army subsequent to the oral discussions contain the following pertinent statement concerning JRL's understanding of section 3.2:

"The memory requirements specified in Section 3.2 of the LACS specification are considered to be design guides for general purpose computers, and are applicable to the LACS system specification when a computer of a particular configuration is utilized as a system processor. Therefore, the performance requirements and the general purpose computer design of the LACS specification are in conflict, and we believe that the computer design guide must be superseded by the performance specification."

Since the Army's position is that section 3.2.2 was intended all along to establish certain memory requirements characteristic of "general purpose computers," or, in effect, that there was no conflict in the specifications, we think that this statement by JRL lends considerable support to the agency's assertion that amendments 0002 and 0003 were merely clarifications and did not represent any change in the requirement.

For the foregoing reasons, we are unable to conclude on the record that the Army's determination of its minimum needs in this case can be found to have no reasonable basis.

Technical Evaluation of the JRL Proposals

JRL has indicated that a "thorough technical review" by our Office of the points at issue is necessary. At the outset, it is important to note that our Office has never taken the position that we will substitute our judgment for the agency's--by conducting technical evaluations of proposals and rendering determinations as to their acceptability--simply because a protest against the technical evaluation has been filed. On the contrary, our decisions have repeatedly emphasized that these functions are primarily the responsibility of the contracting agency, whose judgment will not

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be disturbed by our Office unless clearly shown to be without a reasonable basis. See, in this regard, Austin Electronics, 54 Comp. Gen. 60 (1974), 74-2 CPD 61; 52 Comp. Gen. 393, 399-400 (1972); 52 id. 382, 385 (1972).

In this light, the question before us is not whether JRL's proposals are technically acceptable. Rather, the issue is whether, upon review of the record, the Army's actions in conducting the technical evaluation and arriving at a determination that the JRL proposals were unacceptable have been clearly shown to be without a reasonable basis.

We have reviewed the record of the technical evaluation, as disputed by JRL, including the 41 points at issue referred to previously. We do not find it necessary to discuss these points in detail. For the reasons which follow, we cannot conclude that the requisite evidentiary showing has been made to cause our Office to object to the Army's actions.

We would first note that examination of the RFP does not reveal that novel, innovative approaches to meeting the Army's calibration needs were specifically requested. Offerors were not instructed that an ingenious concept or approach per se would be a primary evaluation and selection factor, taking precedence over the need to show in detail exactly how the requirements would be met. On the contrary, RFP section C-24 stated:

"Each contractor proposal shall respond to each specification described in sections 3.1 thru 3.7 of the Scope of Work on a paragraph by paragraph basis to demonstrate how each requirement will be met. * * *"

It is our view that while the RFP may not have totally excluded proposals with some developmental aspects, it appears to have contemplated simply the award of a fixed-price contract for the procurement of hardware which would be sufficient to satisfy certain stated requirements.

These facts should be considered in light of the following principle stated in Kinton Corporation, B-183105, June 16, 1975, 75-1 CPD 365:

"* * * [I]t is axiomatic in negotiated procurement that an offeror must demonstrate affirmatively the merits of its proposal and that such merit is not to be determined

by unquestioned acceptance of the substance of its proposal."

As JRL has stated, its proposals contained a substantial amount of data, some of which were submitted in the initial proposal, and some of which were submitted later in response to questions raised in the discussions. A large part of this information appears to consist of various manufacturers' technical and descriptive literature, technical manuals and reports, and articles published in technical journals and newspapers. It is with reference to this large volume of material that JRL contends the Army technical evaluators have failed to reach the proper technical conclusions and have failed to point out where JRL's technical assertions are in error. In addition, JRL contends that the Army has failed to ask JRL for additional items of technical information which might be needed to substantiate the soundness of JRL's technical approach. In this regard, the following statement from JRL's August 18, 1975, submission to our Office--which is one of several such statements by the protester--is pertinent:

"* * * It is absolutely untrue that the Army gave JRL any opportunity whatsoever to satisfy any objections that the Army had, in the time between February 5 and the close of business and final offers on March 28. On the contrary, the Army, by its failure to respond to JRL's suggestions that it would supply additional information, deliberately misled JRL into believing that it had completely satisfied the Army's requirements for information." (Emphasis in original.)

This statement is characteristic of JRL's position throughout the procurement and reflects, in our opinion, a fundamental misunderstanding by the protester of negotiated procurement procedures. We do not believe that the burden was on the Army to demonstrate that JRL's system was not a feasible method of satisfying the requirements. Rather, the burden was on JRL to affirmatively demonstrate the merits of its approach. In fact, since JRL was offering what amounted to an innovative, alternative approach to meeting the requirements, under the particular circumstances of this procurement it arguably bore a heavier burden in this regard than would ordinarily be the case.

Given these considerations, we believe that the following review of the technical evaluation is sufficient. As far as JRL's initial proposal is concerned, we are satisfied that the Army had a reasonable basis to conclude that the calculator which was offered did not

meet the expandable memory requirement of section 3.2.2 of the specifications. We also think it reasonably clear that this feature was regarded by the Army as one of the essential requirements of LACS. The fact that correction of this deficiency in the proposal would involve major revisions is illustrated by JRL's option 3 proposal, which substituted a minicomputer in lieu of the calculator in order to meet the memory requirement. Therefore, we have no objection to the rejection of JRL's initial proposal as technically unacceptable. See, in this regard, PRC Computer Center, Inc., B-178205, July 15, 1975, 55 Comp. Gen. ____, 75-2 CPD 35, and decisions cited therein.

As far as the JRL option 3 proposal is concerned, the Army found it to be deficient because, among other things, it did not describe the substituted processor system in sufficient detail to allow evaluation of interface hardware and operating system software. After review of the record, including JRL's option 3 proposal dated February 28, 1975, as supplemented by JRL's submission dated March 22, 1975, we are satisfied that this finding cannot be said to be without a reasonable basis. See, in this regard, PRC Computer Center, Inc., supra. There, the proposal of one of the protesters, the incumbent contractor under predecessor contracts, had been eliminated from the competitive range. The protester contended that its proposal responded to all RFP requirements, that any deficiencies were merely "informational," and that the contracting agency should simply have asked for any additional information it desired, especially in view of the protester's past satisfactory performance.

After reviewing several of the evaluation criteria relating to required clarity and definiteness of proposals, our decision stated:

"These criteria make clear that merely 'parroting' back or generally responding to the RFP requirements with no details of how the particular requirement would be met would not be a satisfactory response. We find that this paragraph, together with the rest of the evaluation criteria, is sufficiently definite to put the offerors on notice that an evaluation penalty would be assessed for incomplete responses to the RFP requirements. Under such circumstances, penalizing an offeror for gross 'informational' deficiencies is reasonable, even if the offeror is thereby eliminated from the competitive range."

Fairness of the Army's Consideration
of JRL Proposals

JRL has raised several points which it believes may indicate a lack of good faith on the part of responsible Army officials in considering its proposals.

JRL first points to the Army's actions in connection with the submission of its initial proposal on December 6, 1974. The Army initially rejected the JRL proposal as late, but subsequently reversed its position and decided that the proposal was timely submitted. JRL alleges that in submitting its proposal, it followed instructions from the contracting officer's assistant, who therefore knew that the submission was timely; that for some unknown reason, the procurement office failed to follow its normal procedure for picking up proposals from the Redstone Arsenal communications center; that the contracting officer falsely told JRL that the Redstone Arsenal legal office was considering the proposal when he had in fact already mailed a letter to JRL rejecting the proposal as late; that the contracting officer refused to assist JRL in raising with the legal office the question of whether the proposal was submitted late; and that it was only because of JRL's own initiative in taking up the matter with an Army attorney that the error was corrected and the proposal accepted as timely.

The contracting officer's explanation of the matter is that the JRL proposal had been timestamped upon receipt in "zulu" time (Greenwich Mean Time), but that initially the stamp was believed to refer to local prevailing time because the letter "z" (denoting zulu time) was not shown. The contracting officer states that when JRL made inquiries concerning the matter, he declined to discuss its proposal and referred the JRL representatives to the legal office. The contracting officer has not specifically commented on JRL's allegations that he knowingly advised the protester that its proposal was being considered when in fact a letter rejecting the proposal as late had already been sent. The contracting officer states that as a result of inquiries by an attorney in the legal office to the communications center, the meaning of the timestamp was clarified and the JRL proposal was accepted as timely.

The reported facts indicate the probability of a reasonable misunderstanding by responsible Army officials which fortunately was corrected. We believe that to draw the inference that the

contracting officer or other Army personnel were deliberately attempting to exclude the JRL proposal from consideration would be mere speculation.

JRL has also stated that there is good reason to suspect that several other prospective offerors were maintaining very close personal contact with members of the Army's technical evaluation team during the time between issuance of the RFP and receipt of initial proposals. JRL points out that the RFP referenced a 500-page package of technical information needed to prepare a proposal. JRL alleges that the contracting officer has stated that "only two companies and JRL specifically expressed a need" for this information, and that these three offerors were the first to receive it. From this, JRL concludes that other competing offerors--which subsequently were sent the technical information--apparently did not need to request it because they had already started their proposal preparation with information improperly disclosed to them earlier by the Army. However, the statement of the contracting officer was not that only two companies and JRL made a request for the technical information, but that such was the situation as of October 29, 1974. Therefore, we believe that the allegations by JRL are unsupported on the record and are completely speculative.

In addition, JRL has made allegations concerning the fair mindedness of the contracting officer and the Army technical evaluators in connection with the oral discussions. For instance, JRL alleges that at the oral negotiations meeting on January 30, 1975, one of the Army technical evaluators allowed other Army personnel present to "heckle" the JRL presentation. It is alleged further that after the meeting the same person refused to accept approximately 150 pages of additional documentation offered by JRL in support of its proposal. Further, it is alleged that the same person refused to allow other members of the evaluation team to make an on-site examination of the interface, software, and operating characteristics of a JRL system located at Redstone Arsenal.

The Army's memorandum of the January 30, 1975, oral discussions indicates that JRL apparently felt it was being "picked on" as a result of the questions posed by Army negotiators. Having read and considered this memorandum as a whole, we do not believe it clearly demonstrates that Army personnel created an atmosphere of unfairness in the discussions. The general

impression conveyed by the memorandum is that there was a serious and lengthy discussion of numerous technical issues.

As for the alleged refusal to accept the 150 pages of technical material, which included 46 pages of material identified by JRL as appendices "B" and "C" to its proposal, the record is not entirely clear. It is possible that the Army technical evaluator refused to accept this material because he believed that, since it supplemented the JRL proposal, it should have been furnished directly to the contracting officer rather than to the technical evaluation team. We note that JRL has stated that, desiring to leave the information with someone at Redstone Arsenal, it gave it to an engineer who apparently had no direct connection with the present procurement. Also, we note that the Army has subsequently stated that it has been unable to locate this material. In this regard, the Army's July 22, 1975, report notes that no part of the proposal was labelled as appendices "B" and "C," and JRL apparently has never furnished these materials directly to the contracting officer.

We cannot conclude that these reported facts prove that the Army technical evaluator in question or other Army personnel treated JRL unfairly. We believe that it was JRL's responsibility to assure that any materials related to its proposals were transmitted properly to the responsible officials. Even if it were assumed arguendo that the technical evaluator acted inconsiderately in declining to accept the materials after the January 30, 1975, meeting, it would seem that the obligation nonetheless rested on JRL to make certain that the materials were submitted in a proper alternate fashion, as, for example, by timely mailing them to the contracting officer after the oral discussions. We note for the record that JRL furnished to our Office an index to the documents contained in appendices "B" and "C," and this information has been considered in reaching our decision.

Concerning the allegation that the Army technical evaluator refused to allow the evaluation team to make an on-site examination of a JRL system at Redstone Arsenal, the Army report indicates that due to the amount of time spent in oral discussions on January 30, 1975, there was not sufficient time for the examination; that the functions of the system which JRL proposed to demonstrate are not the same as the functions of LACS; and that nonetheless several interested Army personnel, including two persons who work in the same division as the Army technical evaluator in question, had in fact attended a demonstration of

the JRL equipment on January 29, 1975. We do not find that these reported facts prove that the responsible Army personnel treated JRL unfairly.

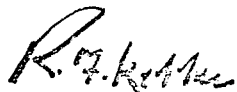
JRL has also raised a point concerning the conduct of Army representatives at the bid protest conference held at our Office on July 2, 1975. JRL states that while it presented evidence at the conference supporting its contentions, the Army representatives present--including responsible Redstone Arsenal personnel--declined to respond. In this regard, we note that while the Army representatives did make some comments during the conference, for the most part they declined to discuss the issues, stating that the agency preferred to reply by means of a supplementary report subsequent to the conference. It is JRL's view that by declining to respond orally at the conference, the Army "lost its claim to credibility and clearly showed that its position on the issues is without merit."

We disagree. It is well established that decisions of our Office are based upon the written record. See our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975); our Interim Bid Protest Procedures and Standards, 4 C.F.R. part 20 (1974); B-165830, July 24, 1969. The Army responded in writing to JRL's protest contentions in two reports prior to the conference (April 18 and May 14, 1975) and in one report subsequent to the conference (July 22, 1975). JRL had an opportunity to comment in writing on each of these reports and did so. It is our view that an adequate written record upon which to base a decision was generated in the present case. Moreover, while a bid protest conference may be useful in fostering a discussion among the parties which helps to illuminate the issues, it is not intended to be a full-scale adversary proceeding with sworn testimony and examination of witnesses. In fact, our Office has specifically rejected the adoption of such a procedure. See 43 Comp. Gen. 257, 263 (1963).

An additional point raised by JRL relates to the Army's past procurements of calibration equipment. JRL asserts that our Office must carefully scrutinize the present procurement because it is but one example of a pattern of procurement actions which have the result of systematically destroying inventor-led, innovative, high technology, small and medium-size electronic companies. JRL has presented information showing what it terms a catastrophic cost increase in the history of Army calibration systems procurements from large companies since 1968.

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In this regard, we must note that bid protest decisions of our Office are rendered in connection with legal objections to the awards or proposed awards of particular Government contracts. See B-176715, November 10, 1972. Thus, we believe that the historical information cited by JRL, which relates to broad procurement policy issues, is not directly pertinent to the issues in this case.


Deputy Comptroller General
of the United States